IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6616 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DECEASED SHANTILAL CHHAGANLAL

Versus

STATE OF GUJARAT

Appearance:

MR JITENDRA M PATEL for Petitioner

MR MA BUKHARI AGP for Respondent No. 1 & 2.

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 25/02/2000

ORAL JUDGEMENT

Learned advocate Mr. Patel is appearing for the petitioner. Learned AGP Mr. Bukhari is appearing for the respondent Nos. 1 and 2. In the present case, the petitioner purchased the land bearing survey No. 446 from its original owner in the year 1972 and, thereafter,

entry no. 1671 dated 12.2.1972 was also made in the revenue record. Said entry was thereafter certified and since then, the petitioner is in possession of the said land as owner and occupant. The said entry is sought to be revised by the Deputy Collector in the year 1987 after a period of 15 years. It was further pointed out that originally, the land bearing survey no. 446 ad measuring 0.Hactre 9 Are and 94 sq. mtrs. is situated in Bahadarpura and its original owner was Bhaichandbhai G.Desai who was the Vatandar of the said land alongwith other S. No. 784, 786, 788,789 and 790. Said Vatan abolished under the provisions of the Baroda Vatan Abolition Act and Entry No. 478 dated 7th October, 1955 was made in the revenue record alongwith aforesaid six S.No. of the original owner to the effect that the said land would be converted in old tenure land on condition that the present petitioner deposits the amount of 20 times' assessment and fifty per cent of the market value. Original Vatandar deposited Rs. 693.90 on 3.2.1954 and Rs.2176.20 ps. on 16.4.1956 as 20 times assessment as per the original order in sub treasury of Sankheda. Said amount has been deposited by the original owner for all of his survey numbers including survey No. 446. Thereafter, lands bearing survey no. 784, 786, 788,789 and 790 were transferred in favour of one Charitable Trust by registered deed and the said land were shown in the name of the trust named as Desai Ranchhoddas Harjivandas and Entry No. 3146 dated 22.10.1982 was made in the revenue record. In another entry no. 3147 dated 22.10.1982, said land were shown as old tenure land in view of the certificate showing the amount of 20 time assessment was paid and the land was entered as an old tenure land. The land bearing s.n.446 alongwith the land covered in the aforesaid Entry No. 3146 and 3147 belonging to the same owner and the said land were shown as an old tenure land while there was no entry was made regarding the petitioner's land. The Mamlatdar seems to have made report to the collector for revising entry no. 1671 and the petitioner contended before the Deputy Collector that he will produce evidence regarding other survey numbers and regarding the fact of making the payment of 20 times assessment but before the petitioner could submit the aforesaid entries and other materials, the Deputy. Collector, under his order dated 9.12.1987, ordered that the said land is forefeited to the Government against which the petitioner had preferred appeal before the COllector,Vadodara which was dismissed by the Collector under his order dated 25.1.1988. Thereafter, the petitioner preferred revision application before the State Government and alongwith the revision application, the petitioner also produced Entry No. 3147

and in view of that, it was contended that the original entry no. 817 has no value as it was not amended afterwards. It is also contended that in the revision application before the State Government, the Secretary has heard only stay application on 23.1.1988 and thereafter, under his order dated 8.6.1988,annexure "G" to the petition, has dismissed the revision application of the petitioner. The petitioner has, therefore, approached this Court by filing this petition challenging the orders passed by the lower authorities as also the order passed by the State Government in revision where his application for revision has been dismissed without hearing him on his revision application.

I have heard Mr. Patel, the learned advocate for the petitioner and Mr. Bukhari, the learned AGP for the respondent authorities who has supported the order passed by the Secretary which is at annexure "G" to the petition.

I have also read and perused the order passed by the Secretary at ANnexure "G" to the petition.On bare perusal of the said order, it clearly appears that the said revision application was heard for interim sty alone but alongwith that, the respondent No. 1 has decided the whole revision application that there is no purpose to be served for admitting the said revision application and, therefore, respondent No.1 has decided not to grant permission to the petitioner for admitting the revision application. Mr. Patel has submitted that the said revision application has been finally disposed of while deciding the interim sty application. He has further submitted that the respondent No. 1 has not called for the records and proceedings from the lower authorities for deciding the merits of the matter. He has also submitted that the petitioner had argued only on the stay application. According to him, the matter is, therefore, required to be remanded to the respondent No. 1 to hear and decide the revision application after hearing the parties and calling the records from the lower authorities.

This petition was admitted by this court on 31.3.1989. While admitting this petition, status quo qua possession was directed to be maintained.

On the facts and in the circumstances of the case, I am of the opinion that since the respondent No.1 has decided the revision application without hearing the petitioner, the matter should be remanded back to the first respondent for passing appropriate orders on the

said revision application after hearing the parties and also after calling for and considering the records from the lower authorities.

Therefore, without entering into the merits of the matter, it is directed that the respondent No. 1 shall decide the said revision application filed by the petitioner after calling for records and proceedings from the lower authorities and also after giving reasonable opportunity to the parties. It will be open for the petitioner to raise all the contentions available to him in law before the first respondent. Since it is an old matter of 1987, the respondent No. 1 is further directed to hear and decide the said revision application in accordance with law as expeditiously as possible,preferably within six months from the date of receipt of writ of this order. During the pendency of the said revision application, the parties shall maintain status quo qua possession of the land in question.

This petition is allowed to the aforesaid extent. Rule is made absolute accordingly with no order as to costs.

25.2.2000. (H.K.Rathod,J.)

Vyas